

April 17, 2023

The Honorable Bruce Westerman  
Chairman  
Natural Resources Committee  
U.S. House of Representatives  
Washington, DC, 20515

The Honorable Raul Grijalva  
Ranking Member  
Natural Resources Committee  
U.S. House of Representatives  
Washington, DC, 20515

**Re: Opposition to Legislation Providing for Congressional Disapproval of Final Rules Protecting the Lesser Prairie-Chicken and Northern Long-Eared Bat and Rescinding the Definition of “Habitat”**

Dear Chairman Westerman, Ranking Member Grijalva,

On behalf of our 35 organizations and our millions of members and supporters, we write to express our strong opposition to H.J. Res. 29 and H.J. Res. 49, which would nullify two rules issued by U.S. Fish and Wildlife Service protecting the lesser prairie-chicken and the northern long-eared bat under the Endangered Species Act, and H.J. Res. 46, which would nullify the final rule issued jointly by the Service and the National Marine Fisheries Service rescinding the definition of “habitat” under the Act.

Using the Congressional Review Act to rescind protections for the lesser prairie-chicken, northern long-eared bat, or any other endangered wildlife or plant would have disastrous consequences. The Congressional Review Act is a blunt instrument with far reaching impacts. Upon enactment of a CRA resolution, the underlying rule becomes void and an agency is prevented from future issuance of a rule that is “substantially the same” without an act of Congress. For an endangered species, use of the CRA could prevent the Fish and Wildlife Service from ever protecting the lesser prairie-chicken or the northern long-eared bat under the Endangered Species Act in the future, even if their populations collapsed or just a handful of individuals remained. Simply put, a vote to approve a CRA resolution for an endangered species is a vote to condemn that species to extinction.

President Reagan signed into law the Endangered Species Act Amendments of 1982, which made clear that all decisions regarding the listing of species as threatened or endangered were to be made “*solely* on the basis of the best scientific and commercial data available.”<sup>1</sup> The reason for this important clarification in the law is simple. Whether or not a species is facing extinction is a scientific question only. The Endangered Species Act contains numerous provisions to provide flexibility and address any hardships that might arise after a species is listed, but short-term political expediency and purported economic costs should not influence listing decisions themselves.

The listing process under the Endangered Species Act requires that the Service consider all relevant science and data regarding any decision to list a species. State fish and wildlife agencies are given special additional procedural privileges to ensure their scientific assessments are fully considered.<sup>2</sup> Every listing decision undergoes scientific peer review and public notice and comment. In contrast, the CRA ignores all of these rigorous and transparent processes, sidelines all meaningful debate, and provides only an unnuanced yes or no choice about any federal agency decision.

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<sup>1</sup> Pub. Law 97-304, Oct. 13, 1982, 96 Stat 1411.

<sup>2</sup> 16 U.S.C. 1533(b)(5)(A)(ii).

Known for the males' elaborate calls and showy displays of reddish-orange air sacs while performing their spring mating dances, the lesser prairie-chicken is a highly imperiled ground-nesting bird that once roamed the southern Great Plains by the millions, but today has declined to roughly 27,000 birds — including a decline of 20% since 2021 — and now is found in less than 10% of its former habitats. After nearly three decades of waiting for protection, the Fish and Wildlife Service issued a final rule in November 2022 protecting the lesser prairie-chicken under the Endangered Species Act. Two populations are now protected: a Texas and New Mexico population is listed as endangered, while a separate northern population in Texas, Oklahoma, Kansas and Colorado is listed as threatened. In making its final determination, the Service specifically found that existing voluntary conservation actions by States and the oil and gas industry “will not be enough to offset...habitat losses,” and that “the expected conservation efforts are inadequate to prevent continued declines in total habitat availability, much less restore some of what has been lost, and overall viability for this species will continue to decline.”<sup>3</sup>

Northern long-eared bats have declined by 99% in a span of just two decades. White-nose syndrome, caused by an exotic fungus originating in Europe, has devastated bat populations across their entire range. Biologists consider the fungus to be the most severe wildlife disease outbreak in history. However, human activities have also played a major role in the bats' catastrophic decline. Northern long-eared bats live in large blocks of mature forests and forage along wooded hillsides and ridgelines, so forest fragmentation, logging, and habitat conversion —clearing trees for agriculture and development — are major ongoing threats to the species, as well as oil and gas drilling, contamination from pesticides, and poorly mitigated wind energy projects. The Fish and Wildlife Service listed the bat as endangered in November 2022 after finding that its previous “threatened” status was not sufficiently protective to keep the bat from slipping further toward extinction. In its final listing rule, the Service found that the bat “continues to experience the catastrophic effects of [white nose syndrome] and the compounding effect of other stressors from which extinction is now a plausible outcome under the current conditions.”<sup>4</sup>

Finally, H.J. Res. 46 would nullify the Biden administration's final rule rescinding the regulatory definition of “habitat” and restore the pro-polluter Trump-era regulation that severely curtailed when lands or waters could be designated as “critical habitat” for imperiled species. This unnecessary and short-sighted Trump rule limited protections to only those areas that could *currently* support the species, while it excluded areas that were previously occupied and could be restored, or that would have provided additional habitat for future recovery as climate change shifts where species can live. In rescinding the rule, the Services explained that the Trump-era regulation was “unclear and confusing and inconsistent with the conservation purposes of the Act...”<sup>5</sup> and that it is more appropriate and more consistent with the Endangered Species Act to “determine what areas qualify as habitat for a given

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<sup>3</sup> 87 Fed. Reg. 72674, 72708, Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status with Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment, *available at*: <https://www.federalregister.gov/documents/2022/11/25/2022-25214/endangered-and-threatened-wildlife-and-plants-lesser-prairie-chicken-threatened-status-with-section>.

<sup>4</sup> 87 Fed. Reg. 73488, 73501, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, *available at*: <https://www.govinfo.gov/content/pkg/FR-2022-11-30/pdf/2022-25998.pdf>.

<sup>5</sup> 87 Fed. Reg. 37757, 37757, Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, *available at*: <https://www.govinfo.gov/content/pkg/FR-2022-06-24/pdf/2022-13368.pdf>.

species on a case-by-case basis using the best scientific data available for the particular species.”<sup>6</sup>

The Congressional Review Act is an extreme law that has been abused by anti-environmental members of Congress who want to permanently strip away protections for our environment, wildlife and natural heritage. Using it here would set an extremely dangerous precedent and would put some of our most iconic species at risk of disappearing forever.

For these reasons, we urge you to oppose H.J. Res. 29, H.J. Res. 46, and H.J. Res 49.

Sincerely,

Center for Biological Diversity  
Animal Welfare Institute  
Bat Conservation International  
Buffalo Field Campaign  
Christian Council of Delmarva  
Defenders of Wildlife  
Endangered Habitats League  
Endangered Species Coalition  
FOUR PAWS USA  
Friends of Ballona Wetlands  
Friends Of Blackwater, Inc.  
Friends of the Earth  
Heartwood  
Howling For Wolves  
Humane Action Pennsylvania  
Humane Action Pittsburgh  
Humane Society Legislative Fund  
Kentucky Heartwood  
League of Conservation Voters  
North Central Washington Audubon Society  
Northeastern Minnesotans for Wilderness  
NY4WHALES  
Oceanic Preservation Society  
Partnership for Policy Integrity  
Predator Defense  
Primate Conservation Inc  
Resource Renewal Institute  
RESTORE: The North Woods  
Rocky Mountain Wild  
Standing Trees  
The #RelistWolves Campaign  
The Humane Society of the United States  
The Rewilding Institute  
The Urban Wildlands Group

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<sup>6</sup> *Id.* at 37758.

Western Watersheds Project  
WildEarth Guardians  
World Animal Protection  
Zoo New England: Franklin Park Zoo & Stone Zoo